



The State of New Hampshire
Department of Environmental Services
Water Council

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STATE OF NEW HAMPSHIRE

WATER COUNCIL

Decision & Order
on Motion for Reconsideration
and Motion for Rehearing

Docket No. 04-15 WC

Appeal of the Town of Nottingham Selectmen

On October 13, 2004, the Water Council voted to decline to accept the Town of Nottingham's Appeal of the Decision of the Department of Environmental Services, Water Division ("DES"), to grant a large groundwater withdrawal permit to USA Springs, Inc. On November 5, 2004, the Town of Nottingham (the "Town") filed a Motion for Reconsideration prior to any written decision and order being issued by the Water Council. On November 9, 2004, DES filed an Objection to the Motion for Reconsideration. On November 10, 2004, the Water Council voted to table the Motion for Reconsideration until it issued its written decision and order.¹

On January 13, 2005, the Water Council issued its Decision and Order Declining to Accept Appeal of Docket No. 04-15 WC. On February 9, 2005, the Water Council voted to deny the Town's Motion for Reconsideration. On February 10, 2005, the Town filed a Motion for Rehearing. On February 25, 2005, DES filed an Objection to the Motion for Rehearing and on March 2, 2005, USA Springs, Inc. ("USA Springs") filed an Objection to the Motion for Rehearing.

The Town's Motion for Reconsideration argues that the Water Council's legal analysis of RSA 21-O, RSA 485-C:21, and RSA 541 is erroneous, partially based on the reliance of the

¹ The Water Council was awaiting assistance from its legal counsel at the Attorney General's Office which caused the delay between the Water Council's vote and the issuance of its written Decision and Order.

September 2, 2004 Opinion of the Attorney General. DES argues that the Water Council's legal analysis is correct. In its Motion for Rehearing, the Town argues the same points as its Motion for Reconsideration and requests that the Water Council rehear the issue of accepting the appeal. DES and USA argue that the legal analysis of the Water Council is correct and that the Town offers no new evidence which support a rehearing of the matter.

DECISION

Based on the legal analysis detailed in its January 13th Decision and Order, the Water Council denies the Motion for Reconsideration and the Motion for Rehearing.

Appeal to the New Hampshire Supreme Court is required under RSA 485-C:21, VI.

Regarding the claim that an appeal to the Water Council is the appropriate appeal, the Water Council explained in detail its legal analysis of RSA 485-C:21, VI and it found that an appeal under that statute is in accordance with RSA 541 and must be made directly to the New Hampshire Supreme Court. While the Water Council understands the Town's argument regarding the Town's analysis of how RSA 485-C:21 interacts with RSA 21-O:7, the Water Council disagrees with this legal analysis. Based on its interpretation of the statutes, the Water Council denies the Motion for Reconsideration and the Motion For Rehearing.

The Water Council's deference to the Attorney General's September 2, 2004 Opinion is required by New Hampshire law.

The Water Council is required to give deference and follow the legal analysis included in the Opinion of the Attorney General, issued September 2, 2004, as this is an official Opinion of the Attorney General. An official Opinion of the Attorney General does not need to be specifically signed by the Attorney General.² When the Attorney General issues an official Opinion

² The September 2, 2004 Opinion is not "simply guidance of one attorney in the Attorney General's Office." It is an official Opinion of the Attorney General and must be followed by all executive branch agencies, boards and councils.

interpreting New Hampshire law, all executive branch agencies are bound by that Opinion. *See* RSA 7:8; *Opinion of the Justices*, 110 NH 26 (1969).

The Water Council is bound by the September 2, 2004 Opinion in which the Attorney General interprets almost identical language in RSA 483-B to that found in RSA 485-C:21, VI. In that Opinion, the Attorney General states when the statutory language requires that the appeal shall be governed by RSA 541 that means that the aggrieved party must file a motion for rehearing and then an appeal to the New Hampshire Supreme Court. The Water Council's January 13th Decision and Order accordingly declined to accept the Town's Notice of Appeal. The Water Council now denies the Town's Motion for Reconsideration and Motion for Rehearing on the same basis.

Order

Motion for Reconsideration and Motion for Rehearing is **DENIED**.

Reconsideration

Pursuant to RSA 541:6, within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the Supreme Court.

So Ordered for the Council by: _____


Michael P. Scifani, Appeals Clerk

May 13, 2005